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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,715	03/14/2001	Theodore S. Jardetzky	AL-8	5680
26949	7590	06/04/2004	EXAMINER	
HESKA CORPORATION INTELLECTUAL PROPERTY DEPT. 1613 PROSPECT PARKWAY FORT COLLINS, CO 80525			ALLEN, MARIANNE P	
			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/809,715	JARDETZKY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Marianne P. Allen	1631	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-22 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3, drawn to a three-dimensional model and method of producing it, classified in class 703, subclass 1.
- II. Claims 4-5, drawn to a crystal complex and method of producing the crystal, classified in class 514, subclass 12.
- III. Claim 6, drawn to a method to identify inhibitors, classified in class 703, subclass 11.
- IV. Claims 7-8 and 10, drawn to inhibitors, classified in class 530, subclass 324, for example.
- V. Claim 9, drawn to a method of protecting an animal from allergy, classified in class 424, subclass 184.1.
- VI. Claim 11, drawn to a peptide, classified in class 530, subclass 387.1.
- VII. Claim 12, drawn to a nucleic acid, classified in class 536, subclass 23.5.
- VIII. Claims 13-14, drawn to a method of improving function, classified in class 703, subclass 11.
- IX. Claims 15-16 and 20-21, drawn to a mutein, classified in class 530, subclass 350.
- X. Claims 17-19, drawn to a nucleic acid encoding a mutein, classified in class 536, subclass 23.5.
- XI. Claim 22, drawn to a method to protect an animal from allergy, classified in class 424, subclass 93.1.

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XII. Claim 22, drawn to a method to detect allergy, classified in class 435, subclass 7.1.

XIII. Claim 22, drawn to a method to enhance a binding assay, classified in class 436, subclass 513.

Note that claim 22 is improperly written as a use claim directed to three distinct methods. This claim will be examined only to the degree that it reflects the elected method.

The inventions are distinct, each from the other because of the following reasons:

The products of Groups I-II, IV, VI-VII, and IX-X can be shown to be distinct because they differ structurally and functionally. The methods of Groups I-III, V, VIII, and XI-XIII can be shown to be distinct because each method has different starting materials, method steps, and/or goals. The products of each of Groups I-II, IV, VI-VII, and IX-X can be shown to be distinct from the methods of each of Groups I-III, V, VIII, and XI-XIII because they either are not used by the method or can be used in multiple methods.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification as well as the necessity for a non-coextensive non-patent literature search, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne P. Allen whose telephone number is 571-272-0712. The examiner can normally be reached on Monday-Thursday, 5:30 am - 1:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-0722. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marianne P. Allen*  
Marianne P. Allen  
Primary Examiner  
Art Unit 1631  
6/3/04

mpa